

RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT

Dated as of February 1, 1973

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RECORDATION NO. \_\_\_\_\_ Filed & Recorded

among

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FIRST SECURITY BANK OF UTAH, N.A., INTERSTATE COMMERCE COMMISSION

BORG WARNER EQUITIES CORPORATION,

and

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

[Covering 26 Rebuilt Locomotives]

RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT dated as of February 1, 1973, among FIRST SECURITY BANK OF UTAH, N.A. (hereinafter called the Vendor), as Agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement), with BORG WARNER EQUITIES CORPORATION (hereinafter called the Vendee) and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY (hereinafter called the Railroad or the Builder).

WHEREAS the Vendee has acquired or will acquire all right, title and interest in certain railroad equipment (hereinafter called the Hulks) pursuant to a Hulk Purchase Agreement (hereinafter called the Hulk Purchase Agreement) dated as of February 1, 1973, with the seller named in Item 1 of Annex A hereto (hereinafter called the Seller), and will subject the same to a security interest in favor of the Vendor for the purpose of causing the Hulks to be reconstructed; and

WHEREAS the Vendor has acquired or will acquire security title to the Hulks pursuant to the Transfer Agreement (hereinafter called the Transfer Agreement) dated as of February 1, 1973, between the Vendor and the Vendee, in substantially the form of Annex B hereto, for the purpose of causing the Hulks to be reconstructed as described herein and thereupon selling the Vendor's interest in the Hulks to the Vendee and the Vendee has agreed to purchase the Hulks so reconstructed (the reconstructed Hulks described in Schedule A hereto being hereinafter called the Equipment); and

WHEREAS certain of the obligations of the Vendee under this Agreement are limited to the extent provided in Articles 3 and 22 hereof; and

WHEREAS the Hulks have been or will be delivered to the Builder and the Builder has agreed to cause the Hulks to be reconstructed as required hereby to enable delivery of the Equipment to be made to the Vendee in accordance herewith; and

WHEREAS the Vendee and the Railroad are entering into a Lease of Railroad Equipment, dated as of the date hereof (hereinafter called the Lease), substantially in the form of Exhibit B attached hereto, leasing the Equipment to the Railroad, subject to this Agreement, which Lease will be filed with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act concurrently with the filing of this Agreement thereunder; and

WHEREAS the Railroad, in order to obtain the use of the Equipment and to induce the Vendor to enter into this Agreement, is willing to guarantee to the Vendor the due and punctual payment of certain sums payable by, and the due and punctual

performance of all other obligations of, the Vendee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Construction and Sale. Pursuant to this Agreement, the Builder will cause the Hulks to be reconstructed into the Equipment as described in Schedule A hereto and will deliver the Equipment, on behalf of the Vendor, to the Vendee and the Vendee will accept delivery of and pay for the Equipment as hereinafter provided, each unit of which shall be standard gauge railroad equipment reconstructed in accordance with the specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing by the parties hereto (which specifications and modifications, if any, are by reference made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the Specifications). The Builder warrants to the Vendor and the Vendee that the design, quality and component parts of the Equipment will conform, on the date of delivery of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications, and all standards recommended by the Association of American Railroads, reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. Inspection and Delivery. The Builder will deliver the units of the Equipment, on behalf of the Vendor, to the Vendee at such point or points within the United States of America as shall be specified by the Builder, freight charges, if any, prepaid prior to December 31, 1973; provided, however, that the Builder shall have no obligation to deliver any unit of Equipment hereunder if any event of default as defined in Article 15 hereof or any event (including particularly the commencement of any proceeding or the filing of any petition of the nature specified in subparagraphs (c) and (d) of Article 15 hereof) which, with lapse of time, failure to take affirmative action and/or demand, could constitute an event of default hereunder shall have occurred (any such event of default or event being hereinafter called a Default).

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plants, equipment or facilities, delays in

receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered and accepted and settled for pursuant to Article 3 hereof on or before December 31, 1973 (hereinafter called the Cut-Off Date), shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence or pursuant to Article 3 hereof, the parties to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. The Vendor and the Vendee shall have no obligation to accept or pay the Builder or the Seller for any Equipment so excluded from this Agreement but shall, in lieu thereof, assign all their right, title and interest therein to the Railroad and the Railroad will indemnify and hold harmless the Vendor and the Vendee for any and all claims and liabilities in respect thereof.

If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the second paragraph of this Article 2 or if any Equipment is excluded from this Agreement pursuant to the first paragraph of Article 3 hereof or is not otherwise settled for pursuant to Article 3 hereof (otherwise than due to the failure of the Builder to deliver the Equipment), the Railroad shall be obligated to accept such equipment and pay the full Purchase Price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, if the Builder and the Railroad shall mutually agree by means of a conditional sale, equipment trust or other appropriate method of financing.

During reconstruction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the reconstruction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units pursuant to the first paragraph of this Article 2, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby

be relieved of its warranties set forth or referred to in Article 13 hereof.

**ARTICLE 3. Purchase Price and Payment.** The cost of the Hulks (the "Hulk Purchase Price") and the estimated base reconstruction cost per unit of the Equipment are set forth in Schedule A hereto. The term "Reconstruction Cost" shall mean the actual cost to the Builder (including reasonable allocation of overhead) of doing the reconstruction work or the estimated base reconstruction cost, whichever is the lesser. The term "Purchase Price" as used herein means the sum of the Hulk Purchase Price and the Reconstruction Cost. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement has theretofore been or is then being made under this Agreement would, but for the provisions of this sentence, exceed \$3,709,100 (or such higher amount as the Vendee may at its option agree to) the Builder and the Railroad will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion reduce the aggregate Invoiced Purchase Prices under this Agreement to not more than \$3,709,100 (or such higher amount as aforesaid).

For the purpose of settlement therefor, the Equipment shall be in one group of units of the Equipment unless the Vendee, the Vendor and the Builder shall otherwise agree (each such group being hereinafter called a Group). The term "Closing Date" with respect to such Group shall mean such date not earlier than December 15, 1973, and not later than the Cut-Off Date, occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Builder by written notice delivered to the Vendee and the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, holidays and any other day on which banking institutions in Salt Lake City, Utah, or New York, New York, are authorized to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date with respect to each Group an amount equal to 55.1104% of the aggregate Purchase Price of such Group as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices); and

(b) in 10 semiannual instalments, as hereinafter provided, an amount (hereinafter called the Conditional Sale Indebtedness) equal to the aggregate of the Invoiced Purchase Prices of the units of the Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the Conditional Sale Indebtedness shall be payable on July 1, 1974, and subsequent instalments shall be payable semiannually thereafter on each January 1 and July 1 (or, if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date, to and including January 1, 1979. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date upon which such Conditional Sale Indebtedness was incurred at the rate of 7 1/2% per annum, and such interest shall be payable, to the extent accrued, on each January 1 and July 1 (or, if any such date is not a business day, on the next succeeding business day) commencing January 1, 1974. The principal amount of the Conditional Sale Indebtedness payable on each of the 10 Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 10 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Railroad promptly after each Closing Date a payment schedule showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest at the rate of 8 1/2% per annum, to the extent legally enforceable, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and, if requested by the Vendor, shall be made by bank wire transfer. Except as provided in Article 6 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate that the Vendee will furnish to the Vendor that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that such portion plus an amount equal to the balance of such Purchase Price shall be paid by the

Vendor to the Builder and the Seller, in accordance with their respective interests as set forth in the invoices delivered to the Vendor pursuant to subparagraph (b) of the immediately succeeding paragraph.

The Vendor shall be under no obligation to make payment to the Builder or the Seller unless there shall have theretofore been delivered to the Vendor the following documents, in form and substance satisfactory to it and its special counsel hereinafter mentioned:

(a) the Certificate or Certificates of Acceptance and the Certificate or Certificates of Delivery contemplated by Section 1 of the Lease with respect to the Equipment in the Group;

(b) invoice of the Builder for the reconstruction of the Equipment in the Group and of the Seller for the Hulks accompanied by or having endorsed thereon the approval of the Vendee of the prices stated therein and a certification by the Railroad as to the correctness of the prices stated therein and as to the Purchase Price having been computed as provided in the first paragraph of this Article 3 and not exceeding the price that would be charged by an independent locomotive rebuilder for comparable reconstruction;

(c) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Vendor and the Investors referred to in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by the Investors, is a valid and binding agreement, (ii) this Agreement has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) security title to the Equipment in such Group is validly vested in the Vendor, free of all claims, liens, security interests and other encumbrances except only the rights of the Vendee under this Agreement, and the rights of the Railroad under the Lease, (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of this Agreement, (v) this Agreement and the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Vendor hereunder in any state of the United States of America or the District of Columbia and (vi) registration of this Agreement or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended; and said opinion shall cover such other matters as shall be reasonably requested by the Vendor or the Investors;

(d) a favorable opinion or opinions of counsel for the Vendee, dated as of such Closing Date, stating that the Transfer Agreement, this Agreement and the Lease have been duly authorized, executed and delivered by the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding instruments enforceable in accordance with their terms;

(e) a favorable opinion of counsel for the Railroad, dated as of such Closing Date, covering the matters referred to in clauses (i) and (ii) of subparagraph (c) in so far as they relate to the Railroad and clauses (iii) through (v) of subparagraph (c) and stating that the Railroad is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted; and

(f) a favorable opinion of counsel for the Builder, dated as of such Closing Date covering the matters referred to in clause (ii) of subparagraph (c) in so far as it relates to the Builder and stating that (i) the Builder is a duly organized and validly existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) at the time of delivery of the units of the Equipment in such Group to the Vendor hereunder, such units were free of all claims, liens, security interests and other encumbrances of the Builder or of anyone claiming through the Builder.

Counsel may qualify any opinion as to the enforceability of any instrument by a general reference to bankruptcy, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving its opinion pursuant to subparagraph (c), counsel may rely on the opinion of counsel for the Railroad, the Builder or the Vendee as to all matters of law of jurisdictions other than the United States or the State of New York involved in said opinion. In giving its opinion pursuant to subparagraph (f) (ii) counsel may rely on the opinion of counsel of previous owners of the Hulks as to the matters set forth in such clause (ii) as they relate to the Hulks.

The obligation of the Vendor to make payment for the Equipment to the Builder and the Seller is expressly conditioned on the Vendor's having received pursuant to the Finance Agreement sufficient available funds to make such payment and upon the Vendor's having received from the Vendee that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3. The Vendor shall not be obligated to make any such payment at any time if a Default (as defined in Article 2 hereof) shall have occurred, whether or not it is continuing. Notwithstanding anything to the contrary herein expressed or implied, the parties



hereto agree that the Vendor shall have no obligation with respect to the reconstruction of the Hulks and delivery of the Equipment hereunder to the Vendee except to the extent that the Builder has fully complied with the Builder's obligations with respect to such reconstruction and delivery.

It is agreed that the obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 3 is specifically subject to the fulfillment, on or before each Closing Date, of the following conditions (any of which may be waived by the Vendee):

(a) the Vendor shall concurrently pay or cause to be paid to the Builder and the Seller the amounts contemplated to be paid by it as provided in this Article 3 and the documents required by this Article 3 shall have been delivered;

(b) no Default (as defined in Article 2 hereof) or Event of Default (as defined in the Lease), nor any event which with lapse of time and/or demand provided in the Lease could constitute such an Event of Default, shall have occurred whether or not it is continuing;

(c) the Vendee shall have received (i) the opinion of counsel required by Section 13 of the Lease, (ii) a copy of the opinion of counsel referred to in subparagraph (c) of the ninth paragraph of this Article 3 and (iii) such other documents as the Vendee may reasonably request; and

(d) the Vendee shall have received a favorable tax ruling in form and content satisfactory to the Vendee from the Internal Revenue Service to the effect set forth in Section 14 of the Lease.

Notwithstanding any other provision or implication of this Agreement, (including, but not limited to, any provision of Articles 15 and 16 hereof), it is understood and agreed by the Vendor that the liability of the Vendee for all payments to be made by it under and pursuant to this Agreement, or for any claim (other than a claim under the last sentence of the second paragraph and the last sentence of the third paragraph of Article 11 and under the first paragraph of Article 14 hereof) based on any provision of this Agreement (including without limitation any claims based on breach of the obligations of the Vendee under the first paragraph of Article 6 and under Articles 5, 8, 9, 10, 12, 13 and 18 hereof) with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of Article 3, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee (which term as used in this paragraph includes the Vendor to the extent payments under the Lease are

made to the Vendor as contemplated therein and any assignee of the Vendee) shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee shall have no personal liability to make any payments or discharge any claims (other than a claim based on Articles 11 and 14 hereof) due or arising under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee as above provided. In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity or enforceability of the Lease or any document relating thereto (except for the due authorization, execution and delivery thereof by the Vendee) or of any of the Railroad's obligations thereunder, (ii) makes no representation or warranty as to title to or the condition of the Hulks or the Equipment and (iii) shall have no obligation or liability whatsoever to see to or be responsible for the performance by the Railroad of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Railroad and the Equipment and to the Vendor's rights under the Lease against the Railroad and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing (or event which, with notice or lapse of time, or both, could constitute an event of default), so much of the following amounts as are indefeasibly received by the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 6 hereof) paid for or with respect to the Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Vendee under the Lease or received by the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee and as shall be required to discharge the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon, due and payable on, or on the business day after, the date such amounts received by the Vendee were required to be paid pursuant to the Lease or as shall be required to discharge any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that

portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or on the business day after, the date corresponding to the date on which amounts with respect thereto received by the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were due and payable under the Lease. It is further agreed by the parties hereto that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment or the Railroad, as guarantor, as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon. Notwithstanding anything to the contrary contained in Articles 15 and 16 hereof or any other provision of this Agreement, the Vendor agrees that (i) in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment against the Vendee to such amounts (ii) it shall not bring suit against the Vendee for any sums in addition to the amounts payable by the Vendee pursuant to said limitations (or obtain a judgment, order or decree against the Vendee for any relief other than the payment of money) except as may be required by applicable rules of procedure to enforce, by appropriate proceedings against the Vendee at law or in equity or otherwise, the obligation to make the payments to be made pursuant to subparagraph (b) of the third paragraph of this Article 3 or any other payments or performance obligations due to the Vendor under this Agreement against the Equipment and the Guarantor.

ARTICLE 4. Title to the Equipment. The Vendor shall and hereby does retain the full security title to and property in the Hulks delivered to the Builder hereunder for reconstruction and shall continue to retain such title during the entire period that the Hulks are being reconstructed and thereafter in the Equipment until the Vendee shall have made all its payments under this Agreement in respect of the Equipment and shall have kept and performed all its agreements herein contained in respect thereof, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Railroad as provided in this Agreement. Any and all additions to the Hulks and the Equipment, and any and all parts installed on and additions or replacements made to any Hulk or unit of Equipment (except (i) in the case of any Hulk or unit of Equipment which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Hulk or unit of Equipment by the Railroad, (other than replacements for any such equipment included in the Hulk Purchase Price or Reconstruction Cost) which is not included in the Hulk Purchase Price of such Hulk or

Reconstruction Cost of such unit of Equipment and which are not required for the operation or use of such Hulk or unit of Equipment by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body and (ii) such other additions or parts as can be removed without damage to and without impairing the originally intended function or use of such Hulk or unit of Equipment and without cost or expense to the Vendor or the Vendee] shall be considered accessions thereto and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 6 hereof, when and only when the Vendor shall have been paid the full Conditional Sale Indebtedness, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute and deliver to the Vendee a release of the Vendor's security interest in the Equipment transferring its security title thereto and property therein to the Vendee, free of all liens, security interests and other encumbrances created or retained hereby and (b) execute and deliver to the Vendee for filing in all necessary public offices, such instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to such Equipment. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty or damages for failure to execute and deliver such release or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such release or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 5. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes or any value-added tax in lieu of or in substitution for any such income tax, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment,

shipment, delivery or transfer of title under the terms hereof, all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 6. Maintenance and Repair; Casualty Occurrences.

The Vendee agrees that, at its own cost and expense, it will cause each unit of the Equipment to be maintained in good order and repair, ordinary wear and tear excepted.

In the event that any unit of the Equipment shall be or become lost, stolen, destroyed or, in the reasonable opinion of the Vendee or the Railroad, irreparably damaged or worn out from any cause whatsoever, or taken or requisitioned by condemnation or otherwise for a period extending beyond the term of the Lease (each such occurrence being herein called a Casualty Occurrence), the Vendee shall, within ten days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Vendee may receive notice thereof under the Lease), cause the Vendor to be fully informed in regard thereto. On the date on which the Lessee is required to make payment for such Casualty Occurrence pursuant to the Lease (or, if the Lease is not in effect, on the date corresponding to such date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 6) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. If the Lease is terminated in respect of the Equipment pursuant to the last paragraph of Section 6 of the Lease while the Conditional Sale Indebtedness is outstanding, the Vendee shall pay to the Vendor,

on the termination date as specified in the last paragraph of Section 6 of the Lease, an amount equal to the Casualty Value of the Equipment as of the date of such payment. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date that such Casualty Value is paid to prepay the Conditional Sale Indebtedness in respect of the unit suffering the Casualty Occurrence, and the Vendee will promptly furnish to the Vendor and the Railroad a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 3 hereof, so that the remaining payments shall be substantially equal.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Railroad, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Conditional Sale Indebtedness remaining unpaid thereon on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 6), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of Conditional Sale Indebtedness made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the units of Equipment.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment for the benefit of the Vendor and the Vendee at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it. Such insurance shall be payable to the Vendor, the Vendee and the Railroad as their interests may appear.

It is further agreed that any insurance proceeds received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor in respect thereof pursuant to the second paragraph of this Article 6. If the Vendor shall receive any other insurance proceeds in respect of insurance carried in respect of such units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article 6 without deduction for such insurance proceeds, the Vendor shall pay such insurance proceeds to the Vendee. All proceeds of insurance received by the Vendor in respect of insurance carried on any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 7. Obligations of Railroad, as Guarantor. The Railroad, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of the Conditional Sale Indebtedness and interest thereon, and the due and punctual performance of all obligations of the Vendee under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Vendee under this Agreement (except for the sums payable by the Vendee pursuant to subparagraph (a) of the third paragraph of Article 3 hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Vendee in any such obligations or payments the Railroad agrees punctually to perform or pay the same, irrespective of any enforcement against the Vendee of any of the rights of the Vendor hereunder.

The Railroad agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity or enforceability of this Agreement or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the last paragraph of Article 3 hereof or Article 22 hereof or any other circumstances which might otherwise limit the recourse of the Vendor to the Vendee. The Railroad hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Railroad hereunder.

In the event that the Railroad shall make any payments to the Vendor on account of its guaranty hereunder, the Railroad agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Railroad; provided, however, that after the payment to the Vendor of all sums payable under this Agreement, the Railroad shall, by subrogation, be entitled to the rights of the Vendor against the Vendee by reason of such payment by the Railroad, to the extent, but only to the extent, that the Vendee has received "income and proceeds from the Equipment" (as defined in Article 3 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in the last paragraph of said Article 3, of sums payable by the Vendee to the Vendor hereunder.

ARTICLE 8. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 180 days from the date of this Agreement, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as of the preceding December 31 the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, such Equipment is marked as required by Article 9 hereof. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the continuance of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control over the same until such name and words shall have been so marked on both sides thereof



and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of a new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Vendee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Railroad or its affiliates to use the Equipment as permitted under the Lease. Nothing contained in this Article 9 shall prevent the Vendee from allowing the Equipment to be lettered with its name, initials or other insignia.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Federal Railroad Administration, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, and in the event that such laws or rules require any alteration of any unit of the Equipment, or in the event that any equipment or appliance on any such unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such unit in order to comply with such laws or rules, the Vendee will make such alterations, changes, replacements and additions at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Railroad as permitted by, and for use as provided in, the Lease, but the rights of the Railroad and its permitted assigns (the Railroad hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; provided, however, that so long as the Railroad shall not be in default under the Lease or under this Agreement in its capacity as guarantor or otherwise, the Railroad shall be entitled to the possession and use of the Equipment as provided in the Lease. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Lease until the Vendor shall have received notice in writing of its intended exercise thereof and agrees that it will not terminate the Lease without the written consent of the Vendor (except termination pursuant to Section 14 of the Lease), and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Railroad or served by the Railroad upon it in connection therewith.

Subject to the provisions of the preceding paragraphs of this Article 11, the Vendee shall be entitled to the possession and use of the Equipment, and the Equipment may be used upon the lines of railroad owned or operated by the Railroad or any affiliate of the Railroad (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Railroad or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Railroad or any such affiliate is regularly operated pursuant to contract, but only upon and subject to all the terms and conditions of this Agreement. Except as otherwise provided in the Lease, the Vendee may also lease the Equipment to any other railroad company with the prior written consent of the Vendor; provided, however, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Equipment, or any part thereof, or the interest of the Vendor therein, equal or superior to the Vendor's title thereto or property therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall

be contested in good faith and any appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessment or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of security title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto remains in the Vendor or the transfer or release of security title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Railroad or the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance or release of security title to, the Equipment, as provided in the last paragraph of Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Vendor makes no warranties whether written, oral, statutory or implied, including the warranties of merchantability or fitness for a particular purpose, with respect to the Hulks or the Equipment or in connection with this Agreement or the delivery and sale of the Equipment hereunder.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification contained in Annex A hereto are herein incorporated as part of this Article 13.

The warranties and indemnities of the Builder contained or referred to in this Article 13 and in any other Articles hereof and all other covenants and obligations of the Builder contained in this Agreement shall inure to the benefit of, and be enforceable by, any lessee, assignee or transferee of this Agreement or of any units of the Equipment reconstructed by the Builder hereunder.

The Railroad agrees to indemnify and save harmless the Vendor and the Vendee against any charge or claim made against either of them and against any expense, loss or liability (including but not limited to claims for strict liability in tort, counsel fees and expenses, patent liabilities, penalties and interest) which the Vendor or the Vendee may incur in any manner by reason of entering into or performing the Hulk Purchase Agreement, this Agreement, any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby or the ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, reconstruction, use, operation, condition, delivery, rejection, storage or return of, any of the Hulks or any units of the Equipment and to indemnify and save harmless the Vendor and the Vendee against any charge, claim, expense, loss or liability on account of any accident in connection with the reconstruction, operation, use, condition, possession or storage of any of the Hulks or any units of the Equipment resulting in damage to property or injury or death to any person. The indemnities contained in this Article shall survive delivery of the Equipment and the performance of all other obligations under this Agreement and the Hulk Purchase Agreement and the termination of this Agreement and/or the Hulk Purchase Agreement.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including without limitation, rights and remedies against the Vendee and the Railroad) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of the Railroad hereunder,

may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to reconstruct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof or relieve the Vendee or the Railroad of their respective obligations to the Builder contained or referred to in Articles 1, 2, 3, 5, 7 and 13 hereof and this Article 14, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Railroad, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by the assignee, change the markings on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such markings to be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of any of the Equipment at the time covered by this Agreement shall be borne by such assignee.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing (without regard to the limitations provided for in the last paragraph of Article 3 hereof or in Article 22 hereof) to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder and such default shall continue for 15 days; or

(b) the Vendee or the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other agreement, term or provision of this Agreement (including such as are satisfied

by the Railroad's undertakings in the Lease), or default in any material respect under any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceeding shall be commenced by or against the Vendee or the Railroad under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Railroad or the Vendee under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Vendee, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or the Vendee, as the case may be, or for their respective property in connection with any such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of possession of the Railroad set forth in Article 11 hereof, cause the Lease immediately upon such notice to terminate in the manner and with the effect provided in Section 9 of the Lease (and the Vendee and the Railroad each acknowledge the right of the Vendor to terminate the Lease) provided, however, that

such termination shall not be in derogation of or impair the rights of the Vendee to enforce compliance by the Railroad with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under Section 9 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement) including the rights of the Vendee to sue for and recover damages provided for in Section 9 of the Lease upon the occurrence of an event of default under the Lease, and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in the sixth paragraph of Article 3 hereof, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment from the Vendee, subject to the limitations of Article 3 hereof, or the Railroad. The Railroad agrees to promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given, provided, however, that prior to the entry of any judgment, order or decree and prior to any sale or contract of sale of the Equipment, the Vendor shall waive any such default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Railroad in writing to that effect, if the Vendee tenders full payment of all arrears of interest on and all instalments of the Conditional Sale Indebtedness (except principal and interest which has become due and payable solely by reason of such Declaration of Default) and if every other default and event of default shall have been made good and cured; thereupon, the respective rights of the parties shall be as they would have been if no such event of default shall have occurred and no such termination of the Lease shall have been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee and the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any

other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Railroad set forth in Article 11 hereof, and upon such further notice and action, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, the Railroad or any other person and for such purpose may enter upon the premises of the Vendee or the Railroad or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall (subject to the rights of the Railroad set forth in Article 11 hereof), at its own expense forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Railroad requiring specific performance hereof. The Vendee and the Railroad hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect



of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Railroad may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon 30 days' notice to the Vendee, the Railroad and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Railroad set forth in Article 11 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Railroad or any other party claiming from, through or under the Vendee or the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such

event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Chicago, Illinois, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendee and the Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Vendee and the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Railroad shall not otherwise alter or affect the Vendor's rights or the Vendee's or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's or the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall, subject to the limitations of Article 3 hereof, pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid first to the Vendee to the extent of the Vendee's interest therein, and then to the Railroad, to the extent of its interest therein.

The Vendee will, subject to the limitations of Article 3 hereof, pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

**ARTICLE 17. Applicable State Laws.** Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the parties hereto to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee and the Railroad, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

**ARTICLE 18. Recording.** The Railroad will cause this Agreement, the first assignment hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act

and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendee and the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 20. Effect and Modification of Agreement.

This Agreement, including any schedules or annexes hereto, exclusively and completely states the rights of the parties hereto with respect to the Hulks and the Equipment and supersedes all other agreements, oral or written, with respect to the Hulks and the Equipment except the Hulk Purchase Agreement. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the parties hereto.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its place of business at the following specified addresses:

(a) to the Vendor, at 79 South Main Street, Salt Lake City, Utah, 84110 Attention: Corporate Trust Department,

(b) to the Vendee, at 4001 West Devon Avenue, Chicago, Illinois 60646, Attention: Vice President-Finance,

(c) to the Railroad or the Builder at 400 West Madison Street, Chicago, Illinois, 60606 Attention: Treasurer,

(d) to ITEL Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, Attention: Contracts Administrator,

(e) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Railroad, by such assignee, or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator,

stockholder, director or officer, past, present or future, of the parties hereto solely by reason of the fact that such person is an incorporator, stockholder, director, or officer, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the first paragraph of Article 6, and under Articles 5, 8, 9, 10, 12 and 13 hereof shall be deemed in all respects satisfied by the Railroad's undertakings contained in the Lease and the Vendor shall look solely to the Railroad for the performance thereof provided, however, that it is further agreed by the parties hereto that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for in this Agreement for the full unpaid Purchase Price of the Equipment and interest thereon. The Railroad shall be liable in respect of its guaranty hereunder for such obligations under said Articles regardless of whether or not the Lease provides for the discharge of such obligations or is in effect. The Vendee shall not have any responsibility for the Railroad's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Railroad's undertakings under the Lease shall be effective unless joined in by the Vendor.

ARTICLE 23. Law Governing. The Vendee warrants that its chief place of business is located in the State specified in clause (b) of Article 21 and the terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of said state; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date set forth on the cover hereof, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

BORG WARNER EQUITIES CORPORATION

by J. H. Zuercher  
Vice President

[Corporate Seal]

Attest:

J. B. Schuler  
Assistant Secretary

FIRST SECURITY BANK OF UTAH, N.A.

by Leon D. Allen  
Vice President and Trust Officer

[Corporate Seal]

Attest:

McBridges  
~~Assistant Secretary~~  
Trust Officer

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY

by J. M. Butler  
Vice President

[Corporate Seal]

Attest:

J. E. Marquardt  
Assistant Secretary

STATE OF ILLINOIS)

) SS.:

COUNTY OF COOK)

On this 19<sup>th</sup> day of March 1973, before me personally appeared J. G. Quinnett, to me personally known, who, being by me duly sworn, says that he is a Vice President of Borg Warner Equities Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires MY COMMISSION EXPIRES  
SEPTEMBER 29, 1973

## SCHEDULE A - (Continued)

### Specifications

The Builder will reconstruct the hulks in accordance with AAR rules and to conform with the United States Safety Appliance standards and Department of Transportation locomotive inspection rules and regulations and otherwise in accordance with this Agreement, including the following:

- (1) Stripping of locomotive,
- (2) Removal of engine, main generator, auxiliary generator and traction motors,
- (3) Rebuilding of engine, main generator, auxiliary generator and traction motors (work to be performed by qualified subcontractor),
- (4) Installation of rebuilt engine, main generator, auxiliary generator and traction motors,
- (5) Rewiring of low and high voltage circuitry,
- (6) Installation of new design control stand and control equipment,
- (7) Installation of 26-L (GP-7's and GP-9's) or 26 NR (NW-2's) brake equipment,
- (8) Modification of car body to incorporate low profile front hood (GP-7 and GP-9 units only),
- (9) Installation of snow plows to front end of unit (GP-7 and GP-9 units only),
- (10) Installation of chemical toilet units (GP-7 and GP-9 units only),
- (11) Overhauling of trucks,
- (12) Repairing of unit body and underframe as required, and
- (13) Scraping, painting and stenciling.



# SCHEDULE A

	Hulk Purchase Price		Base Reconstruction Cost		Purchase Price		Place of Delivery
	Per Unit	Total	Per Unit	Total	Per Unit	Total	
00		\$480,000	\$96,875	\$1,550,000	\$126,875	\$2,030,000	Oelwein, Ia.
00		135,000	121,667	365,000	166,667	500,000	Oelwein, Ia.
00		245,000	111,700	781,900	146,700	1,026,900	Oelwein, Ia.
		\$860,000		\$2,696,900		\$3,556,900	

the Equipment as provided in said Article 2 shall be deemed a waiver or a modification by the Vendor or the Vendee of any of their rights under this Item 2.

Item 3: The Builder agrees to indemnify, protect and hold harmless the Vendor and the Vendee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Vendor, its assigns or the users of the Equipment because of the use in or about the reconstruction of the Hulks or any unit thereof or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

ANNEX A

Item 1: Seller: North Western Leasing Company, a Delaware corporation, having an address at 400 West Madison Street, Chicago, Illinois 60606.

Item 2: The Builder warrants that the Equipment will be reconstructed in accordance with the requirements, specifications and standards set forth in Article 2 of the Reconstruction and Conditional Sale Agreement to which this Annex A is attached (hereinafter called the Agreement) and warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Builder may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Vendee and terminate two years after such delivery. The Builder makes no warranty of merchantability or fitness for a particular purpose. The Vendee's and Vendor's rights under the foregoing warranty shall be their sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment, except for the patent indemnification included in Item 3 of this Annex A. The Builder makes no warranty of merchantability or fitness for a particular purpose. The Vendee's and Vendor's rights under the foregoing warranty shall be their sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment, except for the patent indemnification included in Item 3 of this Annex A.

The Builder further agrees with the Vendor and the Vendee that neither the inspection as provided in Article 2 of the Agreement nor any examination nor the acceptance of any units of

STATE OF ILLINOIS)

) ss.:

COUNTY OF COOK)

On this 19<sup>th</sup> day of March 1973, before me personally appeared J. M. BUTLER, to me personally known, who, being by me duly sworn, says that he is a Vice President of Chicago and North Western Transportation Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

L. M. Fay  
Notary Public

[Notarial Seal]

My Commission Expires MY COMMISSION EXPIRES  
SEPTEMBER 29, 1973

STATE OF UTAH)

) ss.:

COUNTY OF SALT LAKE)

On this 20 day of MARCH 1973, before me personally appeared SCOTT D. ALLEN, to me personally known, who, being by me duly sworn, says that he is a Vice President and Trust Officer of First Security Bank of Utah, N.A., that one of the seals affixed the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.



Notary Public

[Notarial Seal]

My Commission Expires

Nov 4, 1975

RECORDED & INDEXED  
BY \_\_\_\_\_